



The Corporation of the Town of Tecumseh

Public Works & Environmental Services

To: Mayor and Members of Council

From: Phil Bartnik, Director Public Works & Environmental Services

Date to Council: September 10, 2019

Report Number: PWES-2019-45

Subject: Request for Repair and Improvement to the Colchester Townline Drain
Appointment of Drainage Engineer

Recommendations

It is recommended:

That Gerard Rood, P.Eng., Rood Engineering Inc. **be appointed** Drainage Engineer to make an examination of the Colchester Townline Drain (Drain) and drainage area as submitted by the Town in the “Notice of Request for Drain Improvement” dated September 25, 2018;

And that a Drainage Report **be prepared** in accordance with Section 78 of the *Drainage Act (Act)*, including provisions for future maintenance of the Drain.

Background

The Town of Tecumseh (Town) received correspondence from the Town of Amherstburg for a Subsequent connection to the Colchester Townline Drain. The Clerk of the Town of Amherstburg instructed Mr. Gerard Rood, P.Eng., to complete a Report under Section 65(3) of the Drainage Act. The Town of Tecumseh received the Section 65 Report on May 24, 2019 and presented the Report to Council under Report No. PWES-2019-18. Third and final reading was given to the subsequent connection By-Law, being Tecumseh By-Law No. 2019-59.

The Colchester Townline Drain is located on the north side of County Road No. 8 with its upper reach at the 12th Concession and its outlet into the Town of Amherstburg at County Road 9. There are currently four (4) By-laws governing the Drain’s full reach.

- By-Law 78-32 – governs the drain section from County Road 9 (Howard Avenue) to County Road 11 (Walker Road).
- By-Law 2019-59 – governs the subsequent connection at 7981 Howard Avenue.
- By-Law 2014-14 – A Section 76 By-Law governs the assessed maintenance costs completed in 2011.
- By-Law 2014-13 – a Section 78 By-Law incorporates two (2) culverts to the drain between the 12th Concession and Walker Road.

A desktop review of the Drain, between Howard Avenue and Walker Road, indicated that the last cleaning occurred in 1978. A repair and improvement report, drafted in 1978 by C. G. Russell Armstrong, dated September 25, 1978 recommended the cleaning and improvement of the Drain including the replacement of several culverts. This report is appended to By-Law No. 78-32.

Subsequent to the work completed under By-Law No. 78-32, the County of Essex submitted a claim on October 24, 1980, for bank failures that occurred in the Drain indicating that they occurred after Drain improvements. A claim of bank stabilization issues was made by the County of Essex to the Drainage Commissioner of Sandwich South on October 24, 1980. The Chief Building Official procured legal advice and received a letter dated February 6, 1981 and prepared by Paroian, Courey, Cohen and Houston Barristers and Solicitors. The Chief Building Official then responded in a letter dated February 24, 1981 indicating that the County does in fact have liability towards the failures as a result of recent road work performed by the County. The County then provided a letter of opinion dated November 13, 1981 by Consulting Engineers, Togham and Case Associates Inc. (Togham). It was the position of Togham that the slope failures were not the fault of recent road works but more related to soil strength and steep sideslopes that have always been susceptible to slumping/sloughing or bank failures. There is no information in the Town's Drain file confirming that the parties ultimately agreed to the reason for the bank failures following the works completed under By-Law No. 78-32.

The Town has also performed maintenance under By-Law No. 2014-14 for repeated bank failures and bank stabilizations from Concession 12 to Walker Road, in every year consecutively from 2014 to 2019, with the County of Essex making a formal request for maintenance in May of 2015.

During the Town's desktop review of the current By-Law No. 78-32 for the Drain, it was noted that many lands have subdivided, developed and/or changed use since the last engineer's report on that portion of the Drain.

In August 2018, the Town conducted a walkthrough from Walker Road to Howard Avenue and examined the condition and performance of the Drain. The results from this walkthrough concluded that the Drain has considerable sediment build up, a number of bank failures, and heavy brush that is ultimately affecting the performance of the Drain. Four additional culverts were found that are currently not part of the Drain By-Law. The Town has no authority to work on these culverts until such time that they are incorporated as part of a drain bylaw.

Although not required, the Drainage Superintendent held a meeting with affected landowners on July 15, 2015 indicating that the Town had received a request to repair the various bank failures on the Drain. Minutes from this meeting are attached to this report under attachment No. 2.

Since the drainage work on the Drain from the 12th Concession Road to Walker Road, there was a subdivision of land at the 11th Concession Road. The Town has prepared an apportionment agreement with respect to same and is awaiting the signatures of the affected lands for their share of costs. This agreement is required in order to utilize By-Law No. 2014-14 to assess the costs associated with multiple years of maintenance on the Drain.

The recommended Section 78 report will provide a complete tool to address the inconsistencies in the various land changes within the watershed and provide recommendations to address the historic and ongoing bank stability issues/responsibilities to the benefit of all affected landowners.

Comments

Legislation

The sections of the *Act* referenced within this report are included in Schedule A that is attached to this Council Report as Attachment No. 3.

Required approvals

On July 31, 2019, the Town sent notification to the Essex Region Conservation Authority (ERCA) that the Town had received a request for the repair and improvement of the Drain.

As outlined in Section 78(2) of the *Act*, the Engineer shall not be appointed until after the 30-day notification to the Conservation Authority who has regulation of the area. This report is in line with those provisions and the 30 days has lapsed.

The proposed drainage works will need to be self-assessed through the Department of Fisheries and Oceans (DFO). In order to obtain a formal Authorization, it may be necessary to provide habitat compensation for loss of habitat for the proposed works. Any resulting impacts to habitat must be replaced with equivalent habitat features. If a Biologist is required, the cost of same becomes the responsibility of the proponent and ultimately considered a drainage cost that will form part of the Report.

The Drain may contain significant species (aquatic species at risk (SAR) as well as plants, animals, habitat, etc.) that are protected under the Endangered Species Act (ESA). The Town will use its SAR Mitigation Plan for Drainage Works under Section 23.9 of Ontario Regulation 242/08. The Town's registered municipal drainage works permitted under Section 23.9 of Ontario Reg. 242/08 will provide the MNRF with the Notice of Drainage Work Activity Form annually and provide information on any encountered species and mitigation plan for same.

Appointment of Engineer

The existing Drain By-Laws are not currently usable with respect to performing the required repair and maintenance or improvements on the Drain. Land severances and illegal culverts would require apportionment agreements and culvert sharing cost agreements for all landowners in the watershed.

Rood Engineering has completed several reports within the Town and recently studied the hydraulics of the watershed in order to complete the Section 65 report. Rood Engineering Inc. is the best fit for this work and facilitates logical economics for the benefit of all affected landowners who are assessed and rely on the Drain for outlet.

Consultations

Financial Services
Corporate Services & Clerk
Rood Engineering Inc.

Financial Implications

The Engineer's Report shall assess for special benefit, benefit, outlet and liability. A schedule of assessment is to be contained in the report, which details in separate columns, the sums assessed for each parcel of land and the road authority's liability. It is anticipated that the Town will be assessed for benefitting municipal roads within the drainage area.

Link to Strategic Priorities

Applicable	2019-22 Strategic Priorities
<input type="checkbox"/>	Make the Town of Tecumseh an even better place to live, work and invest through a shared vision for our residents and newcomers.
<input checked="" type="checkbox"/>	Ensure that Tecumseh's current and future growth is built upon the principles of sustainability and strategic decision-making.
<input type="checkbox"/>	Integrate the principles of health and wellness into all of Tecumseh's plans and priorities.
<input checked="" type="checkbox"/>	Steward the Town's "continuous improvement" approach to municipal service delivery to residents and businesses.
<input type="checkbox"/>	Demonstrate the Town's leadership role in the community by promoting good governance and community engagement, by bringing together organizations serving the Town and the region to pursue common goals.

Communications

Not applicable

Website

Social Media

News Release

Local Newspaper

This report has been reviewed by Senior Administration as indicated below and recommended for submission by the Chief Administrative Officer.

Prepared by:

Sam Paglia, P.Eng.
Drainage Superintendent/Engineering Technologist

Reviewed by:

John Henderson, P.Eng.
Manager Engineering Services

Reviewed by:

Phil Bartnik, P.Eng.
Director Public Works & Environmental Services

Reviewed by:

Tom Kitsos, CPA, CMA, BComm
Director Financial Services & Chief Financial Officer

Reviewed by:

Laura Moy, Dipl. M.M., CMMIII HR Professional
Director Corporate Services & Clerk

Recommended by:

Margaret Misek-Evans, MCIP, RPP
Chief Administrative Officer

Attachment Number	Attachment Name
1	Request for Improvement
2	Onsite meeting minutes
3	Schedule A – Drainage Act
4	Colchester Townline Drain – Map